IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8405 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAVATSINH RANUBHA

Versus

V S SINHA OR HIS SUCCESSOR & OTHERS.

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Appearance:

MR RJ OZA for Petitioners

Mr. Sudhansu S. Patel, AGP for Respondent No. 1

NOTICE SERVED for Respondent No. 2, 3/AA, 8/A-8/B, 9/A-9/D.

Mr. Chetan Pandya for MR SV RAJU for Respondent No. 3(b) 4(c) & 4(b).

Mr. J.T. Trivedi, for Respondents No. 3 & 4.

SERVED BY AFFIX.(N) on Respondent No. 5/A-5/B,6/A-7

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CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 19/09/2000

ORAL JUDGEMENT

After the Court of the Civil Judge (S.D.) at Bhavnagar on 31-12-1970 passed the decree in Special Civil Suit No. 1 of 1969 declaring the shares of the parties in the undivided properties and directing the Collector under Section 54 of the Civil Procedure Code to partition the lands assessed to payment of revenue to Government, and put the parties in possession of the portions of the land falling to their respective shares, the Collector for the District of Bhavnagar on 16th May 1986 as per the settlement arrived at amongst the parties divided the lands and directed the Mamlatdar to hand over the possession of the land. The order was challenged in Revision. The Additional Chief Secretary, Revenue Department (Appeal) at Ahmedabad on 23-5-1990 allowing the Revision set aside the order of the Collector (Respondent No.2) dated 16th May 1986 and directed the Collector to act as if he was the Commissioner appointed within the meaning of the Civil Procedure Code and complete the work of partition within a period of two months. By this application under Article 226 & 227 of the Constitution of India, the order passed in revision is called in question with a prayer for issuance of a writ of mandamus or certiorari or any other appropriate writ quashing and setting aside the order passed in revision on 23rd May 1990, and also directing the respondent No.2 to determine the mesne profit, etc.,.

2. Necessary facts may be stated. The petitioners are the brothers. Kuvarsang Narbha is their uncle. They were having the ancestral undivided properties, namely building, building-lands, agricultural-lands etc., at Madhuvan and Zazmer of Talaja Taluka in Bhavnagar District. The petitioners' father died around 1955. At that time they were minors. Their uncle Kuvarsang Narbha was managing their affairs. Their uncle sold certain agricultural lands to the father or husband of respondents No.3 to 9 as the case may be, through whom they are claiming. The petitioners after attaining majority, because of the dissension that had arisen with their uncle, decided to have the partition of the Hindu Undivided Family properties and have their respective shares. A notice was then given to their uncle and those who had purchased the agricultural lands, but when they paid no heed the petitioner No.1 filed the suit being Special Civil Suit No. 1 of 1969 in the Court of the Civil Judge (SD), Bhavnagar for partition, 1/6th share in the properties and mesne profit against Respondents Nos. 1 to 8 joining his brothers the petitioners Nos. 2 & 3 as defendants Nos. 9 & 10. The then learned Civil Judge (SD), Bhavnagar on 31st December 1970 passed the preliminary decree. The Court held that Kuvarsang

Narbha, the uncle of the petitioners (joined as defendant No.1) was having 1/2 share while the petitioners were jointly having 1/2 share, i.e individually they were having 1/6th share. In view of Section 54 of the Civil Procedure Code he sent the decree to the Collector, Bhavnagar, for effecting the partition of the agricultural lands assessed to payment of land revenue to Government and put the respective parties into the possession of the portions of the lands falling to their respective shares etc. After a long time on 16th May 1986 the Collector divided the properties keeping several-land laws in mind and directed the Mamlatdar at Talaja to hand over the possession of the lands fallen to the share of the respective parties. He divided the lands keeping in mind the settlement arrived at amongst the parties after the court passed the preliminary decree. The purchasers of the agricultural lands, namely opponents No. 2 to 8 were allowed to retain 1/2 share and rest of the portions of the lands were divided. The heirs and legal representatives of deceased Lakha Sura and Chotha Sura the opponents No. 3 & 4, Bhimubha Jatubha and Makubha Jatubha the opponents No. 5 & 6 preferred the appeal before the Secretary, Revenue Department (Appeals), Ahmedabad. On 17th March 1990, after the Collector passed the order, more particularly described as final decree, the appeal was then converted into Revision because the Additional Secretary was of the view that appeal was not competent in law as there was no provision in law for the same. He therefore keeping Section 211 of Bombay Land Revenue Code in mind (for short, "the Code"), converted the appeal into the Revision. On 23rd May 1990, the revision was allowed observing that Collector was appointed as the Commissioner by the Court of the Civil Judge (SD) and therefore the Collector had to act in accordance with Order 26 Rules 13 & 14 of the Civil Procedure Code. The Collector was therefore under an obligation to prepare the report and send it to the court passing the decree. It was then for the Civil Court to decide, if at all the objections were filed by the parties as to whether to accept the report or to modify or alter the same, or even quash the same. Instead of sending the report to the Civil Court when the Collector had passed the final decree, it was not in consonance with the provisions of law. It is against this order, the present application is filed for the issuance of appropriate writ and quashing the order passed in Revision.

3. It is the contention of the learned advocate representing the petitioners that the Collector, to whom under Section 54 of the Civil Procedure Code the copy of

the decree was sent for effecting the partition of the lands assessed to payment of land revenue, was virtually exercising the powers flowing from the Civil Procedure Code or the decree itself, and not under the Code. The Revision which was converted from the appeal was therefore not at all maintainable before the Additional Chief Secretary, Ahmedabad. If at all some of the parties had a grievance against the order of the Collector relating to the division of the agricultural lands, the Civil Court ought to have been moved for appropriate order, and after the order was passed the party feeling aggrieved could have preferred the appeal before this Court keeping the provisions of Civil Procedure Code in mind. In fact, against the order of the Collector, initially the Civil Court was moved but the Civil Court held that the order of the Collector was just and proper, and thereafter the Revision in question was preferred which was not at all consistent with law. If at all any thing remained to be done by the Collector and was not being done, in accordance with the decree, the Civil Court was the only authority to direct the Collector to complete his work under Section 54. In this regard, my attention is drawn to the decision of the Supreme Court in the case Chintaman Vs. Shankar and Others - (1999) 1 S.C.C. 76. Placing reliance on the decision of the Bombay High Court in the case of Ningappa Balappa and others Vs. Abashkhan Goushkhan - AIR 1956 Bombay 345, it is the further submission of the petitioners' learned advocate that it is not the case that after the decree for partition of land assessed to land revenue has been passed, the Court becomes functus officio or powerless. No doubt, the decree in that case is to be executed and partition is to be effected by the Collector, but the Court is not entirely deprived of controlling the action taken by the Collector. In view of such decision, Revision before the Revenue Authority in the hierarchial set-up was not at all competent. If at all there was any grievance, the Civil Court ought to have been moved for remedying the grievance and if any of the parties was not satisfied with the eventual order of the Civil Court, the Appeal or Revision ought to have been preferred before this Court, but when that procedural remedial measures are not resorted to and the Revision not competent in law was filed, it would be most appropriate for this Court to quash the order passed in Revision holding that the Revision was not at all maintainable. The ld. advocate has then drawn my attention to the decision of the Mysore High Court in the case of Ramachandra Shamarao Kulkarni Vs. Prahlad Krishnaji Kulkarni and others - AIR 1964 Mysore 31 wherein it is held that when the partition of the

properties assessed to payment of revenue to Government is made, the decision of the Collector cannot be considered to be the decision within the meaning of the Code and it is not subject to an appeal to any revenue authority under Section 203 of the Code.

4. In reply to such contention, Mr. J.T. Trivedi, the ld. advocate representing the respondents No. 3 & 4 placing reliance on the decision rendered in the case of Mohd. Yunus Vs. Mohd. Mustaqim and others - AIR 1984 S.C. 38 submits that the jurisdiction of the High Court under Article 227 or even under Article 226 of the Constitution is very limited. This Court cannot correct the error apparent on the face of the record, much less the error of the law committed by the lower forum. The Court does not act as an appellate Court or Tribunal, and it has not to review or reweigh the evidence and to correct the errors of law in the decision challenged. He therefore on this count urges to reject the application holding that the jurisdiction being limited the Court cannot correct the errors of law even if there be any.

5. Mr. Pandya, the ld. advocate representing the respondents No. 3(b), 4(b) & 4(c), submits that the Collector is a Revenue Officer; and even if the decree for partition of the agricultural lands subject to land revenue is sent to him for partition, he would be dividing the land and putting the parties into the possession of the portions of the land fallen to their respective shares keeping applicable land laws in mind and so he will be functioning as the Revenue Officer. Hence appeal against the decision of the Collector has to be filed under Section 203 of the Code, or Revision has to be preferred under Section 211 of the Code. When accordingly the procedure is required to be followed and no error of law has been committed, this Court has no justifiable reason to interfere with the orders exercising the jurisdiction under Article 226 or 227 of the Constitution of India. He also supported aforesaid contention raised by the learned advocate, Mr. J.T. Trivedi.

6. Mr. Sudhansu Patel, the learned AGP for the opponents No. 1 & 2 has supported the impugned orders and accepting the contentions raised by the ld. advocates representing the other opponents he urges to dismiss this petition.

7. First of all I may deal with the writ jurisdiction of this Court when the parties have raised the contention in that regard. No doubt, as held in the

case of Mohd. Yunus vs. Mohd. Mustaqim (supra), the jurisdiction of this Court under Article 226 and 227 is supervisory, but the duty of this Court is to see that the lower Forums or the Tribunals function within the limits of their jurisdiction. This Court cannot correct the error apparent on the face of the record, much less an error of law. As this Court does not act as the appellate Court or Tribunal, it would be beyond its competence to review or reweigh the evidence upon which the determination of the lower Court or Tribunal purports to be based, or to correct the errors of law in the decision. It may be stated that writ jurisdiction can be exercised not only in the cases when there is jurisdictional error or the procedural error inclusive of omission to act in conformity with the principles of natural justice, but also in the cases where the fundamental rights are violated, or enforcement of a legal right is necessary, or the authority disregarding the facts and materials on record, has arbitrarily passed the order leading to miscarriage of justice, or it has decided on extraneous consideration, or has passed the order in bad faith, or the order is perverse or unreasonable or absurd, or where interference in the interest of justice is necessary so as to do complete justice, or the question of consideration of statutory provisions is involved, or constitutional point is raised, or question relating to statutory duty or obligation is involved, or compliance or implementation of the order is difficult or injurious or confusing or embarrassing or places the party between the devil and the deep sea.

8. In the case on hand, the issue relating to the interpretation of Section 54 Civil Procedure Code along with Rule 18 Order 20, C.P. Code as well as applicability of Section 203 & 211 of the Code is raised, and the same being the question with regard to the consideration of statutory provisions as well as relating to the statutory duty or obligation, and also in respect of the jurisdiction of the Court & other Forums as to which of the hierarchial set-up for redressal of the grievances is competent and is required to be moved, this Court does acquire the writ jurisdiction to dissect the merits of the issue, interfere with the order if found necessary, and pass appropriate order.

9. In the case on hand, a preliminary decree for partition of the properties both agricultural lands and other properties came to be passed by the then learned Civil Judge (SD) at Bhavnagar. The copy of the decree was then sent to the Collector, Bhavnagar for effecting

the partition of the agricultural lands subject to assessment of land revenue and putting the parties into the possession of the land fallen to their respective share. This has been done because of the provision of Section 54 of the Civil Procedure Code. In view of the rival contentions, the questions (1) whether the decree passed is in the eye of law the preliminary decree or the final decree so far as it relates to the division of the property (land) subject to assessment of revenue (2) whether the Collector is the revenue officer and against his decision qua partition of the land subject to assessment of land revenue appeal or revision would lie before the Revenue Authority in hierarchial set-up under the Code or before the Civil Court passing the decree under C.P. Code, (3) what is the control of the Civil Court passing the decree, and (4) whether the Collector to whom the decree is sent u/s. 54 C.P. Code for partitioning the agricultural land subject to land revenue has to pass final decree or make any report to the Court arise for determination. In order to decide the questions, firstly relevant provisions of C.P. Code may be stated.

"54. Partition of estate or separation of share.

"Where the decree is for the partition of an undivided estate assessed to the payment of revenue to the Government, or for the separate possession of a share of such an estate, the partition of the estate or the separation of the share shall be made by the Collector or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession of shares, of such estates."

One should not miss to note, Rule 18 of Order 20, C.P. Code helpful to decide whether the decree passed for partition of the agricultural lands subject to assessment of land revenue is the final decree or a preliminary decree, and that provision is couched in the words as under :

"18. Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then,__

(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54;

(2) if and in so far as such decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties interested in the property and giving such further directions as may be required."

It may be mentioned here, that one must not overlook the definition of the decree given vide Section 2(2) Civil Procedure Code which runs as under :

"2.(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include___

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation.___ A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final.

In view of such provisions and especially explanation to Sec. 2(2) and Sub-Rule (2) to Rule 18, Order 20 which provide to pass preliminary decree qua the properties other than properties assessed to the payment of revenue to Government, the decree passed directing to partition the agricultural land will be the final decree as the Civil Court has nothing further to do in the matter, which is required to be done when properties other than agricultural land are ordered to be partitioned. After the decree directing the Collector to partition the agricultural lands subject to land revenue is passed, the Civil Court has even not to execute the decree; the Collector has to partition and put the concerned parties into the possession of the portions fallen to their share. The Civil Court has then not to even adjudicate any issue. Hence by passing the decree qua agricultural lands the suit is finally & completely disposed of. The decree passed ordering to partition the properties both agricultural as well as non-agricultural properties, will be the final decree so far as it relates to agricultural lands subject to land revenue, while it will be the preliminary decree so far as it relates to the properties, not assessed to the payment of revenue to Government.

10. Necessary case laws, some of which are cited by the parties, throwing light on the proposition may be referred to though in view of above clear provisions no case-law is required to be referred to. The Bombay High Court had an occasion to deal with the question in D.M. Jacinto and another Vs. J.D.B. Fernandes - 1939 Bombay 454 = 41 Bom.L.R. 921. Keeping Rule 20, Order 18, Civil Procedure Code in mind, it is held that when the decree is sent to the Collector for carrying out the partition of the agricultural land and subsequently the application is filed by the parties to the Court to send the decree and papers to the Collector, the same does not amount to execution. In that regard, it is further observed that when the decree is passed by the Court, its duties are finished and it is for the Collector to partition the property and put the parties into possession. When decree, may be a preliminary decree, is passed in a partition suit but agricultural lands are to be divided, the same would be a final decree as the actual partition of the agricultural lands is to be carried out by the Collector and nothing further in this regard is required to be done by the Court. In the case of Ramabai Govind Vs. Anant Daji - AIR (32) 1945 Bombay 338, the question was relating to limitation. In that connection, it is held that after the decree for partition of revenue paying land is passed, the application to send the papers

to the Collector is not governed by Article 181 or 182 of the Limitation Act. In that decision, it is observed at Page 340 that the decree passed will not fall within the definition of a preliminary decree as given in the Explanation to Section-2 sub-section (2), Civil Procedure Code and referring to a decision of the Calcutta High Court in 57 Calcutta 1013, it is observed that in fact no other final decree is ever passed after decree is once passed under R. 18(1) O.20, C.P. Code. A preliminary decree cannot for ever remain a preliminary decree, but contemplates a final decree upon which the decree-holder may take out execution. The Collector cannot make a final or first decree in a Civil Suit for partition, and yet the Civil Court is not required by the Code to pass any further decree or to make its decree final at any stage. Upon this footing the first and final decree to be passed by the Court would be a final decree. In Ramagouda Rudregowda Patil and others Vs. Smt. Lagmavva and others - AIR 1985 Karnataka 82, it is made clear that after the decree is passed for effecting the partition of the estate subject to assessment of land revenue and the decree is sent to the Collector for effecting the partition and handing over the possession to the concerned parties, the jurisdiction of the Collector remains confined only to the partition of the lands i.e., actual division by metes and bounds and handing over the possession of a share. Whether the concerned land is partible or impartible can be determined by the Court and not the Collector. It is also made clear that the decree so far it relates to the agricultural land would remain to be a preliminary decree and not a final decree.

11. Out of these three authorities first two support the view I have taken hereinabove. Whenever in a partition suit the decree for division of the agricultural lands subject to land revenue is passed, the same would be the final decree as the actual partition is to be carried out by the Collector and nothing further is required to be done by the Civil Court, and no direction remains to be issued. As discussed hereinbelow the Civil Court may have a limited control over the Collector, but that does not relate to basic feature of partition of the land as per decree and putting the parties into the possession of the land falling to their share. Such control will not therefore make the decree preliminary. In the decision of Ramagouda Rudregowda (Supra) , the Karnataka High Court does state that once the decree declaring the shares of the parties is passed, the Civil Court has nothing more to do, meaning thereby the case has come to an end. The decree viewing from such angle will be final for the Civil Court is the observation made

referring its earlier decision in Raojirao Desai's case wherein it is held that so far as Civil Court is concerned, the decree passed under Rule 18(1) Order 20, C.P.Code directing partition by the Collector is final and not preliminary; but to negative the contention raised that the period of limitation qua execution would begin to run in the case of a final decree, it is held that for the Civil Court after a decree is passed it has nothing further to do in the matter and the case comes to an end; however the decree cannot be termed a final decree. It is not elucidated how it cannot be termed to be the final, and would remain to be preliminary though the Court has nothing further to do. It is therefore not possible to assign dissenting reasons. However, it may be stated that it is not made clear when the Court will have to pass final decree if the decree passed declaring the shares of the parties and sent to Collector u/s. 54, C.P. Code for partition and delivery of possession qua the estate assessed to the payment of revenue to the Government is the preliminary decree. In my view, when C.P. Code does not in such case provide for a final decree, the decree passed under Rule 18(1), Order 20 C.P. Code should be treated to be final. With respect therefore the view taken by the Karnataka High Court cannot be accepted. Even otherwise also, the view of the Karnataka High Court being contrary to the Bombay High Court's view in abovestated two decisions cannot be accepted. It may be stated that the decisions of the Bombay High Court, rendered prior to 1.5.60, the day on which Gujarat State & High Court of Gujarat came into being, owing to bifurcation of then bilingual State of Bombay are to be treated to be the decisions of this Court and the same have to be, keeping the law of binding precedent in mind esteemed. The decisions of the Bombay High Court show correct position of law and there is no justifiable reason to differ and refer the issue to a larger Bench. As per the Bombay decisions, the contrary view cannot prevail. The Court has, after passing the decree, a little control over the Collector's performing his function after the receipt of the decree and that also shows that the decree passed must be treated to be the final decree. I may refer the decision regarding Courts' control over the Collector after the decree is passed, and sent to Collector u/s. 54, C.P. Code for partition and delivery of possession.

12. The High Court of Bombay in the case of Bhimangauda Konapgauda Patil Vs. Hanmant Rangappa Patil - 20 Bom.L.R. 411 = AIR 1918 Bombay 206 = 42 Bombay 689, has held qua Section 54 of the Civil Procedure Code that when the Collector acting under Section 54 of the Civil

Procedure Code effects partition, it is not open to the Civil Court to entertain any application seeking reopening of the partition because the policy of Section 54 is that the Legislature thought that the Collector would be better qualified than the Court to carry out such partition. The policy would be defeated if the appeal is allowed permitting to re-open the partition made by the Collector. Regarding execution of the decree qua the agricultural land subject to the land revenue the Bombay High Court in Timmanna Parmeshwar Bhat Vs. Govind Ganpati Bhat and others - AIR 1926 Bombay 258 has laid down that once the Collector executes the partition, the Court cannot send the case again to the Collector for repartition. It is also held that the Collector must follow the terms of the decree. If he disregards the terms of the decree and divides the property not in conformity with the terms of the decree, the Court is entitled to interfere. The Collector has no power to read the decree together with the judgment so that he can partition the land in a manner which is not contemplated by the decree. The High Court of Sind had an occasion to deal with the question in the case of Chandumal Jasumal and others Vs. Hafiz s/o. Din Muhammad and others AIR (30) 1943 Sind 7. What is held therein is that the act of effecting the partition under Section 54, and Rule 18 Order 20 C.P. Code is a ministerial work of the Court. The Collector therefore cannot disregard the terms of the decree. He cannot divide the property in contravention of the terms of the decree, and if he does so the Court is entitled to refer the case back to the Collector, to partition the property in accordance with the terms of the decree. The Collector cannot alter the decree. The Court cannot dictate to the Collector the manner in which the estate shall be partitioned or divided. The Collector must divide the estate in accordance with the rights declared in the decree, but in the manner he thinks best bearing in mind the need and the convenience of the land as a revenue paying entity. So far as shares are concerned, the Collector is bound by declaration of the rights of the parties. The Collector has also to esteem the preferential right declared qua particular piece of property. The Court has no power to fetter the discretion of the Collector to overrule the powers conferred upon the Collector under Section 54 and Order 20 Rule 18, C.P. Code. The High Court of Madras in Sree Rajah Mantripragada Venkataraghava Rao Bahadur, Zamindar Garu and others Vs. Sri Rajah Mantripragada Venkata Hanumantha Rao Bahadur, Zamindar Garu (deceased) and others - AIR (32) 1945 Madras 336, has when occasion arose laid down that when the Collector under Section 54 of the Civil Procedure Code partitions the agricultural

lands subject to the Government revenue, the Civil Court has no power to hear the objection because once the Court sends the decree to the Collector for action under Section 54, the matter passes entirely out of its hands and Court has no right to interfere. The Court has no power to examine his work or direct him to make a fresh partition and even cannot direct to modify the partition. In the case of Dharam Singh Satawansingh Vs. Deosingh Sitaram - AIR (37) 1950 Nagpur 102, what is observed is that the partition of land revenue paying estate has to be made by the Collector under Section 54 of the Civil Procedure Code or by any other Revenue Officer, the Civil Court has no jurisdiction or power to effect the partition of the land revenue paying estate or reopen the partition already made by the Collector or the Revenue Officer. The duty of the Court is to give effect to the partition made by the Collector or the Revenue Officer, but the power to deliver the possession in accordance with partition made is quite distinct from a power to effect the partition. The Collector effecting the partition has the power to deliver the possession so as to complete the partition, but if that is not done a party can approach the Civil Court with a suit to recover the possession in accordance with the partition effected by the Collector or the Revenue Officer. The High Court of Bombay, in Ningappa Balappa and others (Supra) has laid down that after the decree for partition of the land assessed to land revenue has been passed, the Court has nothing further to do with the decree. The decree is to be executed and the partition is to be effected by the Collector. There cannot be therefore any execution proceeding before the Court. However, the Court is not entirely deprived of controlling the action taken by the Collector, but this control is very limited. The Court has to exercise with limited control only if the Collector contravenes the decretal order or transgresses the law relating to partition or refuses to execute the decree. The duty of the Court comes to an end when it passes the decree and when no execution proceeding can lie before the Civil Court, it is not open to the Court to entertain an application under Section 47 and give direction to the Collector qua the manner in which the decree is to be executed. The High Court of Madhya Pradesh, in Bhagwansingh Vs. Babu Shiv Prasad and another - AIR 1974 M.P. 12, while dealing with the issue has held that when the Court passes the preliminary decree for partition and transfers the decree to the Collector for effecting the partition, the Civil Court becomes functus officio, and if subsequently final decree is passed by the Court it is without jurisdiction and not enforceable. The Supreme Court, in the case of Khemchand

Shankar Choudhary and another Vs. Vishnu Hari Patil and others - AIR 1983 S.C. 124 has held that once the decree for partition is passed and the same is sent to the Collector for effecting the partition of the agricultural land and thereafter the property is transferred, the transferees during the pendency of the partition can appear and claim equitable partition even though they were not the parties to the suit in the Civil Court. The Collector has not to in that case fold the hands and return the papers to the Civil Court. If there is no dispute regarding the transferees, the Court may proceed to make allotment of the property in an equitable manner instead of rejecting their claim for such equitable partition on the ground that they had no locus standi. Where there is no dispute in such a case and the Collector makes an equitable partition he would neither be violating a decree nor transgressing any law. The High Court of Bombay, in the case of Dev Gopal Savant Vs. Vasudev Vithal Savant - 12 Bom. 372, has held that when the preliminary decree is passed with regard to the estate subject to land revenue the execution thereof is entirely in Collector's hand, but that does not deprive the Court of a judicial control of its decree, as for instance, if it should appear to have been obtained by fraud or surprise, or if the Collector acts in a bad faith or contravenes the command of the Court or transgresses the law. If it is alleged that the Collector made objectionable partition, it would not be a ground for the Court to interfere. In the case of Shrinivas Hanmant Vs. Gurunath Shrinivass - 15 Bombay 527, it is held that the Collector is not subject to the Superintendence of the Court or revisional jurisdiction of the Court. The Court has no power to examine the work of the Collector or direct him to make fresh partition. It is also made clear that the Collector cannot refuse to carry out the decree. In the case of Purushottam Vs. Balkrishna - 28 Bombay 238, it is made clear that the Court has the power to set aside wholly or partly a partition made by the Collector, in execution of a decree sent to him u/s. 265, C.P. Code, 1882 (now Sec. 54) if it is found that the Collector has contravened the decretal command or has acted ultra vires because action of the Collector is subject to the control & correction of the Court. In the case of Ramachandra Dinkar Vs. Krishnaji Sakharam - AIR 1915 Bombay 279 = 40 Bombay 118 what is made clear is that the Collector should be treated to be the agent of the Civil Court and therefore the Court has a power to correct the mistake made by the Collector in carrying out partition. In Ningappa Balappa's case (Supra), it is made clear that after the decree for partition of land assessed to revenue is

passed, the Court has nothing further to do with the decree. The decree is to be executed & partition is to be effected by the Collector. Execution proceedings can never be before the Court. It is also made clear that the Court has a limited control which is to be exercised only if the Collector contravenes the decretal order or transgresses the law relating to partition, or refuses to execute the decree.

13. A perusal of Sections 54 & 2(2), as well as Rule 18 Order 20 Civil Procedure Code, and the above stated pronouncements on these provisions, make it clear that whenever a preliminary decree in the partition suit is passed and the copy thereof is sent to the Collector under Section 54 of the Civil Procedure Code for effecting the partition of the properties assessed to land revenue, nothing further is required to be done by the Civil Court in the matter. The Civil Court cannot direct to reopen the partition, or after partition is effected the Court cannot send the case again to the Collector. The Court can neither dictate how to partition the estate assessed to the payment of revenue to the Government, nor hear objections qua partition & possession to be given. The Collector is also not under the superintendence of the Court. However, the Court is not powerless; it has limited control over the Collector to whom the decree is sent for effecting partition u/s. 54 C.P. Code and put the parties into the possession of the land fallen to their respective shares. If the Collector disregards the decree, or alters the decree or alters the rights and obligations of the parties under decree, or does not divide the estate in confirmity with the decree, or refuses to esteem the decree, or acts in bad faith, or acts as the appellate authority over the Civil Court, or decides the question determinable only by the Civil Court, the Civil Court on being moved can pass appropriate order, correct the mistake made relating to the subject falling within limited control and issue appropriate direction. It may be stated that if the Collector is acting contrary to the direction of a decree or is not putting the sharers in the possession or there is a confusion and correct interpretation of the decree is not possible and some explanatory note is necessary or the properties in the meanwhile are sold and transferees are not heard by the Collector, or their claim is also not considered by the Collector or a question regarding devolution or any other issue arises for which the Collector is not competent to decide, the Civil Court will have the power to dispose of the application in that regard and give to the Collector an appropriate direction. Such limited control indicates that the

decree in partition suit passed relating to the estate assessed to the payment of revenue to Government is the final decree, and not the preliminary decree. The view taken in Ramagouda Rudregowda's case (Supra) is for the above stated provisions & reasons is with respect not appealing.

14. In the case on hand, as submitted, the Collector after the receipt of the decree, passed the final decree dividing the agricultural lands but such act of the Collector is not at all in consonance with the law. As stated above, the decree is final and nothing further is required to be done except partitioning the lands and putting the parties into the possession of the portion of the land falling to their respective shares. In the above referred case of Rambai Govind, the High Court of Bombay has also made it clear that in a Civil Suit for partition, the Collector cannot make a final decree because Civil Court is also not required to pass any further decree or make its decree final at any stage. The act of the Collector passing the final decree is therefore improper and unjust.

15. The Collector is vested with the power to partition the agricultural land because he is vested with required powers under the revenue laws and different land laws. He is therefore acting as the Revenue Officer and the officer under the land laws. He would therefore be the best person to divide the agricultural lands and deal with all ancillary issues and dispose the same of fully and finally. When he has to divide the land in accordance with the revenue laws and other land laws applicable, and has also to keep in mind the Government revenue, he is the officer who in best way can be termed the Revenue Officer. This is what is made clear by the High Court of Bombay in the case of Paygonda Survgonda Patil and others Vs. Jingonda Surgonda Patil and others - AIR 1968 Bombay 198 laying down that the decision of the Collector effecting the partition of the revenue paying land in execution of a decree passed by the civil court is subject to an appeal to the Commissioner under Section 203 of the Code, and is also revisable under Section 211 thereof. In that decision, it is made clear that the Collector is a Revenue Officer because he is appointed under the provisions of the Code, and also because the purpose of his employment and the normal work for which he is employed is to look after the revenue administration of a district. The decisions and orders passed by him are therefore appealable under Section 203 even if they are not passed in the course of revenue

administration. The higher authorities of the Collector have a right to examine the correctness of the decision or the order of the Collector. Section 54, Civil Procedure Code contains no provision and certainly no express provision which runs counter to the appellate powers conferred under Sec. 203 of the Code. In this decision, incidentally it may also be stated that with regard to the writ jurisdiction it is made clear that High Court will not interfere with the order of the lower Court however wrong it may be in law but if it is necessary to interfere in the interest of justice, the Court would certainly interfere and pass appropriate order. The Collector is not subject to revisional jurisdiction of the Court, is also made clear by the High Court of Bombay in Shrinivas Hanmant's case (Supra). Whenever therefore the party has grievance against the order of the Collector effecting partition & putting the parties in possession of the portion of the land falling to their shares, there being no specific provision in the Civil Procedure Code qua Section 54, C.P.Code, the Appeal or the Revision permissible under the Code has to be filed before the higher authority of the Collector in hierarchial set-up under the Revenue laws or the Code, and not under the Civil Procedure Code. The decision in Ningappa Balappa's case (Supra), the High Court of Bombay does not lay down that the Revision before the Collector's higher authority is not competent and the same has to be filed in Civil Court of the District Court. As stated in Para 12 hereinabove, the said decision lays down that the Court has limited control which is to be exercised only if the Collector contravenes the decretal order. On such decision, it cannot be inferred or assumed as has been done by the ld. advocate in making submission that the Revision will lie before the Court. The contention based on this decision that Revision cannot lie before Addl. Chief Secretary must fail.

16. The High Court of Mysore has, in Ramachandra Shamrao's case (Supra), has held that the partition made by the Collector u/s. 54, C.P. Code is really made under the provisions of C.P. Code although it has to be made in accordance with the Revenue Laws, may be the Code or land laws applicable and governing the estate. The Collector is the designated instrument through whom the partition u/s. 54 has to be made. He therefore simply carries out the decree or executes the same. He does not pass any order within his competence under the Code or other Revenue Laws. There is in fact no proceeding under Revenue Laws before him. In short, all that the Collector does is to give effect to the decree and for that purpose he is no more than a person statutorily

entrusted with the duty u/s. 54 of C.P. Code. The partition effected is therefore under C.P. Code and the same being no proceeding under the Code, and not being the decision or order within the meaning of Sec. 203, of the Code, the same cannot be made the subject matter of an appeal to any of the revenue authority under that Section. Such decision of the Mysore High Court cannot be pressed into the services of the petitioner as submitted. Referring several decisions of the Bombay High Court rendered prior to 1st May 1960, the day on which the State of Gujarat came into being, dissenting view is taken by the Mysore High Court. As per law of binding precedent stated above, the decisions of the Bombay High Court have to be followed & esteemed. Further, I have no reason to take a different view than the sound view taken by the Bombay High Court in the above decisions and decisions referred to by the High Court of Mysore, and refer the matter on the issue to a larger Bench. Further, the Collector does not simply carries out partition mechanically. He is free to make equitable partition keeping in mind the revenue laws or other land laws, e.g. Bombay Prevention of Fragmentation and Consolidation of Holdings Act, etc. He decides the manner of partition maintaining the rights of the parties determined by the Court. He is therefore required to take decision under Revenue Laws and the Code qua the partition. His decision will therefore fall within the ambits of Sec. 203 or 211 of the Code, and not C.P. Code. After the receipt of the decree from Court the Collector undergoes necessary statutory formalities and divides the estate. Such formalities or action at law is the proceeding under Revenue Laws, because he will have to issue notice and hear the parties and decide the manner of partition. The decision taken by the Collector is the decision in the proceeding under Revenue Laws before him. The decision in Ramachandra Shamrao's case, with respect for such reason, does not surpasses the view of the Bombay High Court to which I am leaning upon being binding precedent and acceptable, and also the view of the said High Court in the case of Paygouda Survgouda (Supra).

17. In the case on hand, after the receipt of the preliminary decree, the Collector divided the agricultural lands as per the order dated 16th May 1986 (Annexure `B'), of course as per the settlement arrived at by the parties consistent with the laws applicable and in law permissible too, because taking consent of the parties if equitable partition is made, the decree cannot be said to have been violated, and it cannot be said that the Collector is transgressing his limits or illegally

alters the same. It was within his competence. The issue that was required to be challenged did not fall within the limited control of the Court. Hence the said division of the properties made was then challenged before the Additional Chief Secretary, Revenue Department (Appeal), Gujarat State, but as the appeal was not permissible or may be barred by the period of limitation, the Additional Chief Secretary treated it to be the Revision and passed the impugned order. The Additional Chief Secretary has proceeded on a wrong interpretation of law or under mistaken impression regarding law. According to him whenever the Court, after passing the preliminary decree, sends the decree under Section 54 of the Civil Procedure Code to the Collector for partitioning the agricultural land and putting the sharers in possession of the portion falling to their share, he is acting as the Commissioner of the Court and has to send his report to the Court. The Court then hearing the parties may accept or reject the report. The Collector made a mistake in partitioning the properties and putting the parties in possession. He ought to have sent the Report to the Court. He then set aside the order of Collector & directed him to act as the Commissioner keeping Order 26, C.P.Code in mind. Such decision of the Addl. Secretary in Revision cannot in my view be sustained. Rules 13 and 14 Order 26, C.P. Code in such case do not apply. The Collector, does not act as the Commissioner of the Court. He has not to prepare any report and send the same to the Civil Court for appropriate order for further action, as held by the Additional Chief Secretary because Sec. 54, C.P. Code does not contemplate what the Addl. Chief Secretary has held. The order passed by the Additional Chief Secretary cannot therefore, in any way, be maintained in law as the Additional Chief Secretary has proceeded on a mistaken assumption or a mistaken impression about the law. That order, on this count, therefore, is required to be quashed and set aside.

18. Even otherwise also, the order in Revision passed cannot be maintained. Of course under Section 211 of the Code, no period of limitation for preferring the Revision is prescribed, but that does not mean that at any time or even after years together the authority can entertain the application as Revision Application, or call for the records suo motu, and examine the same in Revision. What is by passage of time and expiry of period of limitation has come to an end, should not be opened and reviewed. A similar question arose before the Supreme Court as to what should be the period within which the authority, under Section 211 of the Code, can review the order

passed by the lower authority ? Considering different aspects, the Supreme Court, in the case of State of Gujarat Vs. Patel Raghav Natha and Ors 10 G.L.R. 992 = AIR 1969 Gujarat 1296, has made it clear that when no period of limitation is prescribed under Section 211, the powers under the Section must be exercised within reasonable time and that reasonable time must be determined in the facts of the case and nature of the orders passed. Considering Section 65, the Court held that reasonable period would be three months. When a similar question arose before this Court in the case of Bhagwanji Bawanji Patel Vs. State of Gujarat and Another - 12 G.L.R. 156, it is held keeping abovestated decision of the Supreme Court in mind, of course considering the facts and circumstances of that case also, that the reasonable period for reviewing the order must be one year. In such cases also, when parties are contesting for their share, it would be better if the higher authorities desire to review the order passed by the Collector, review the same within a period of one year. In the case on hand, the Collector passed the order on 16th May 1986, while the Appeal, which came to be converted into Revision, was filed on 19th March 1990. So, after about 4 years, the Revision Application was filed and the impugned order came to be passed on 25th May 1990 without condoning delay, as prayer in that regard it seems was not made. When the Revision Application is not filed within the period of one year from the date the Collector passed the order, it was not at all just, legal and proper for the Revisional Authority to review the order passed by the Collector. In view of the matter also, the impugned order passed by the Collector is required to be interfered with.

19. For the aforesaid reasons, the application is allowed. The order dated 23rd May 1990, passed by the Addl. Chief Secretary, Revenue Department (Appeal), Annexure `D' is hereby quashed and set aside. The order of the Collector is maintained. Regarding mesne profits, parties may resort to the remedial measures available before the competent Court. No costs. Rule accordingly made absolute.

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